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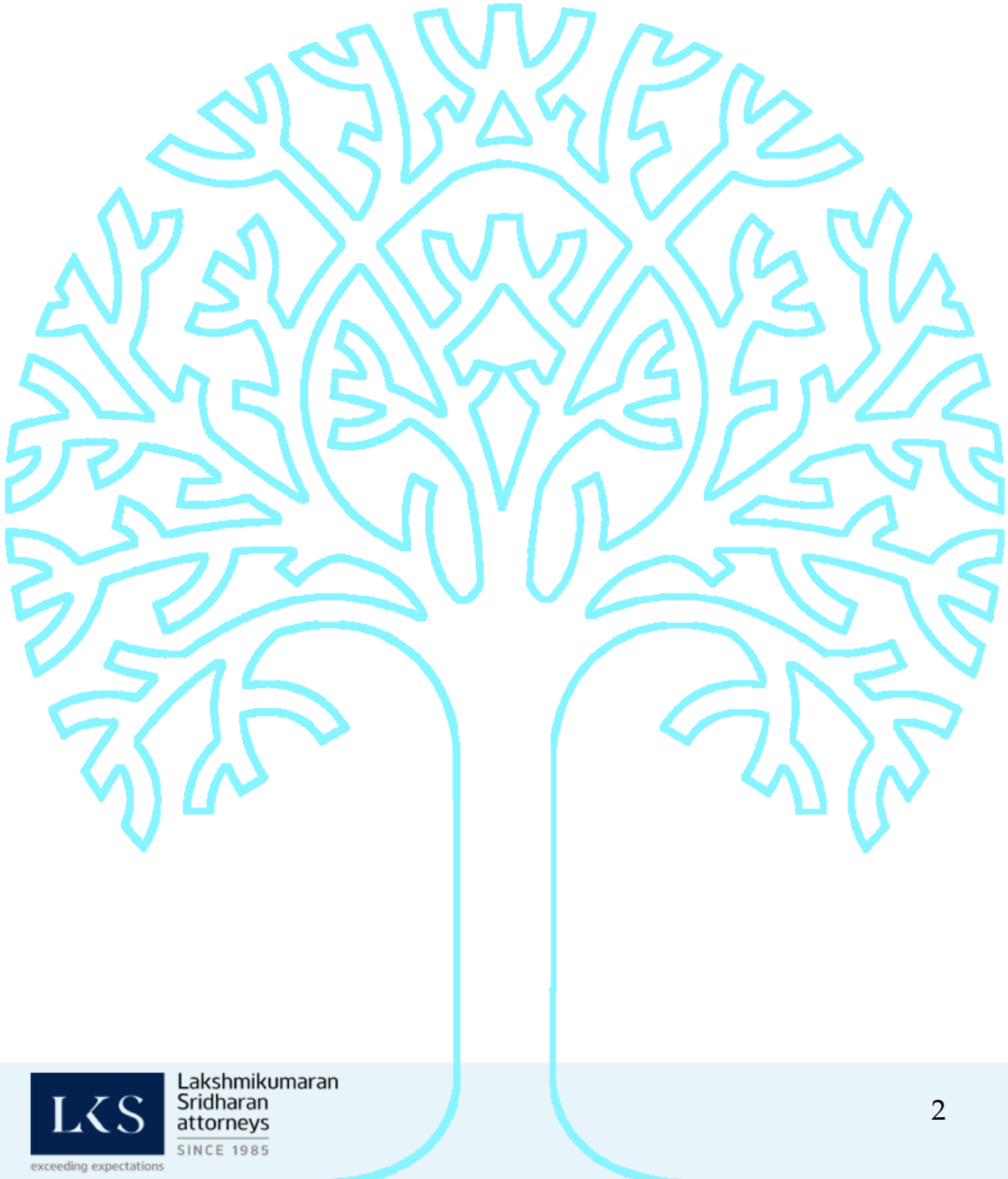

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Notifications and Circulars

Pan masala, tobacco and tobacco products – Effective date for implementation of new special procedure extended to 15 May 2024

The Central Board of Indirect Taxes and Customs ('CBIC') has extended the date of implementation of the new procedure to be followed by the manufacturers of pan masala, tobacco and its products to 15 May 2024. The new procedure earlier notified by Notification No. 4/2024-Central Tax was to come into force from 1 April 2024. It is believed that the new procedure will simplify the reporting process in respect of specified goods, thus enabling a smoother experience for manufacturers of such goods. Notification No. 8/2024-Central Tax, dated 10 April 2024 amends Notification No. 4/2024-Central Tax with effect from 1 April 2024 for this purpose.

Investigations – CBIC issues guidelines for officers

The Central Board of Indirect Taxes and Customs has issued detailed guidelines for CGST field formations in maintaining ease of doing business while engaging in investigation with regular taxpayers. Certain points covered in CBIC Instruction No. 1/2023-24-GST (Inv.), dated 30 March 2024 which are relevant for the assessees are highlighted below.

- Investigation must be initiated only after approval of (Pr.) Commissioner, except in the specified situations where prior written approval of the zonal (Pr.) Chief Commissioner is required.
- Fact of initiation of inquiry, if any, already on same subject matter with respect to the same taxpayer/GSTIN by another investigating office or tax administration must be ascertained.
- DGGI or the State GST department if also simultaneously undertaking record-based investigation of the same taxpayer on different subject matters, feasibility of one officer pursuing all matters to be explored.
- In case of prevalent trade practice, where scenario results in more than one interpretation and likelihood of litigation, change in practice etc., the zonal (Pr.) Chief Commissioner is to make a self-contained reference to the

relevant policy wing of the Board i.e. the GST Policy or TRU.

- Official letters and not summons are to be addressed to designated officers of a listed company or PSU or Corporation or Govt Dept./agency or an Authority established by law for seeking details that are record-based and/or are reflected in statutory books of account or filings.
- Letter/summons should disclose the specific nature of the inquiry being initiated/undertaken.
- Information available digitally/online on GST portal should not be called for under letter/summons from a regular taxpayer.
- Letter/summons with context or content akin to a fishing inquiry is not acceptable.
- Summons – Prior reasoned approval of content should be obtained from officer not below Dy/Asst. Commissioner level.
- Relevancy and propriety of what is being sought from regular taxpayer must be recorded.
- Investigation must reach the earliest conclusion which is not more than one year.

Ratio Decidendi

Interest on delayed filing of return and payment of tax – Availability of ITC in e-credit ledger is inconsequential

The Patna High Court has answered in negative the question as to whether Section 50(1) of the CGST Act, 2017 prohibits the levy of interest when the debit is made from an e-credit ledger and permits the levy of interest only when the debit is made from an e-cash ledger. The Court in this regard noted that the credit to the e-credit ledger occurs only upon self-assessment, which in turn occurs only upon furnishing a return, and that the credit available in the e-credit ledger would be set off against the output tax only upon the furnishing of returns for the tax period by debiting the e-credit ledger. The Court also observed that if there is a delay in furnishing of returns then obviously there is a delay in the input tax credit coming into the Electronic Credit Ledger and a resultant payment being made to the Government as tax, interest, penalty or other amounts due.

Reliance by the assessee on proviso to Section 50(1) was rejected by the Court while it held that the anomaly sought to be rectified by addition of the proviso was not of prohibiting a levy of interest in case of delayed return when the payment of amounts due under the CGST Act is made from the Electronic Credit Ledger. As per the High Court, the anomaly sought to be rectified was to avoid assessees claiming deposit made into the cash ledger as payment of dues under the GST provisions. Hence, according to the Court, whether it be the e-credit ledger or the e-cash ledger, interest is payable on the delay in payment of tax. [*Sincon Infrastructure Pvt. Ltd.* v. *Union of India* – 2024 VIL 366 PAT]

Constitutional validity of 101st amendment to Constitution leading to GST regime can be challenged only be aggrieved person

The Patna High Court has dismissed a writ petition filed by a lawyer alleging that Sections 2, 9, 12 and 18 of the Constitution (101st Amendment) Act, 2016 violates the basic structure of the Constitution of India and hence, is invalid, void and unconstitutional. Dismissing the petition, the Court noted that the petitioner had not suffered any legal injury by the 101st Amendment, especially since he was not involved in

commercial activities. The Court also noted that the petitioner had no case that he was registered under the GST enactments and was also not prejudiced by the mechanism of reverse charge under the GST regime. Submission of being a public interest litigation was also rejected by the Court while it observed that the dealers registered under the earlier VAT regime, now shifted to the GST regime, by virtue of the 101st Amendment cannot be said to be a marginalized section, who are incapable of agitating their rights before the courts of law. [*Amit Pandey* v. *Union of India* - (2024) 17 Centax 187 (Pat.)]

Cancellation of GST registration cannot be declined due to pendency of DRC-01 proceedings

The Delhi High Court has held that the proceedings under DRC-01 are independent of the proceedings for cancellation of GST Registration and can continue despite cancellation of GST registration. The Court hence was of the view that recovery of any amount found due can always be made irrespective of the status of the registration. According to the Court, thus, merely pendency of the DRC-01 cannot be a ground to decline the request of the taxpayer for cancellation of the GST Registration. The Department was directed to the registration from the date it was sought without prejudice to the proceedings initiated by the Department for the period prior to such date. [*Chetan Garg* v. *Avato Ward 105 State Goods and Service Tax* – (2024) 17 Centax 267 (Del.)]

Penalty under Section 122(1A) – 'Person' in said provision is necessarily to be a taxable person

The Bombay High Court has set aside the show cause notice invoking the provisions of Section 122(1A) and Section 137 of the CGST Act, 2017 to impose huge penalty and to initiate prosecution against the petitioner, who was an individual and employee (Senior Tax Operations Manager cum Authorised Person) of the company against whom demand was raised. The notice had alleged that the petitioner had committed offences of the nature as described under the provisions of Sections 122(1)(i) of the CGST Act, 2017, which led to the evasion of GST by the company. The Court in this regard observed that as per the intention of the legislature, a person who would fall within the purview of Section 122(1A) should necessarily be a 'taxable person', who would be in a legal position to retain the benefit of tax on the transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1), and at whose instance, such transaction is conducted. The Court noted that the said provisions are not applicable to an individual like the petitioner, and that there was no material that it was at the instance of petitioner that transactions were conducted so as to

make the petitioner liable to penalty equivalent to the tax alleged to be evaded or ITC availed or passed on by the company.

Further, in respect of penalty under Section 137, the Court found it intriguing as to how such penal provision could be foisted against the petitioner, when the show cause notice was itself a demand cum show cause notice. According to the Court, such proceedings would be in the nature of a prosecution necessarily involving the applicability of Section 134. The High Court also found it ill-conceivable to read and recognize into the provisions of Sections 122 and 137 any principle of vicarious liability. [*Shantanu Sanjay Hundekari* v. *Union of India* – 2024 (3) TMI 1277-Bombay High Court]

Interest on delayed refund of ITC is to be paid automatically

The Telangana High Court has held that interest automatically accrues on the delayed refund made by the Department. The Court in this regard noted that Section 56, the proviso and its explanation provided to the section does not provide for any circumstances or situation under which the delayed refund does not attract interest. The Court also noted that Rule 94 of the CGST Rules, 2017 also provides for certain periods which shall not be included in the period for which the interest is payable, which would also mean that interest on the delayed refund is automatic. According to the High Court, the provision for the grant of interest has to be treated as a beneficial legislation and should be enforced non-discriminately.

The High Court in this dispute also held that order by the Appellate Authority, Tribunal or the Court of law as the case may be for the purpose of its enforceability of refund has be treated as if it is an order under Section 54(5) of the CGST Act, 2017 and as such interest would be calculated immediately after sixty (60) days within which the payment of refund has to be made starts. [*Microsoft Global Services Center (India) Pvt. Ltd.* v. *State of Telangana* – 2024 VIL 312 TEL]

Refund when tax paid twice, once under wrong head and then under correct head – 'Relevant date' is the date of payment under correct head

In a case where the assessee had paid tax under the wrong head on 20 December 2017 and paid tax under the correct head on 19 August 2019, the Delhi High Court has held that refund application filed under Section 54 of the CGST Act, 2017, on 11 May 2020 is not barred by limitation. The High Court in this regard relied upon CBIC Circular No. 162/18/2021-GST dated

25 September 2021, which had clarified that the 'Relevant Date' is the date when the tax is paid under the correct head. The assessee's refund application filed on 14 July 2022 was also held as not time-barred by the Court while it observed that as per the Circular, in cases where the taxpayer had made payment under the correct head before the issuance of Notification No. 35/2021-CT dated 24 September 2021, the refund application could be filed within two years from 24 September 2021. [*DMI Alternatives Private Limited* v. *Additional Commissioner* – 2024 VIL 391 DEL]

IGST refund in case of exports under consignment/exhibition basis – CBIC Circular dated 18 July 2019 when not applicable

The Bombay High Court has allowed a writ petition against denial of refund of IGST in case of exports under consignment/exhibition basis when the GST Common Portal and ICEGATE Portal did not make a provision to cater to the situation during July 2017 to December 2018. The assessee-exporter had paid GST subsequent to exports, upon approval from the foreign importer, and had sought to amend the shipping bills to reflect the final quantum of confirmed goods on which IGST was paid. The amendment in shipping bills was denied and consequently the refund was rejected as the shipping bill/refund application was not in consonance with the GST returns.

The Court observed that Rule 96 read with Rule 96A of the Central Goods and Services Tax Rules, 2017 would be applicable in the present case. It held that when appropriate compliances were made by the exporter, merely because of non-compatibility of the data between the two authorities, namely, Customs Department and the GST Department, and also for the reason of non-compatibility with the electronic portals, refund could not be denied to the exporter. The High Court also held that CBIC Circular dated 18 July 2019 was not applicable as the same was not in existence during the period of exports, i.e. the period from July 2017 to December 2018. It in this regard observed that the circular would also not override the provisions of the substantive rules framed under the CGST Act. Further, according to the Court, the circular did not prohibit a situation as in the present case, when the export stood confirmed, invoices were issued and such shipping bills were presented and accepted by Customs. The refund was allowed along with interest. [*Venus Jewel* v. *Union of India* – 2024 VIL 326 BOM]

Appeal to Appellate Tribunal – Pre-deposit required only of 20% remaining tax and not of interest

The Calcutta High Court has set aside the Single Bench decision which had directed for deposit of 20% of interest also while filing appeal to Appellate Tribunal. The Court in this regard noted that the legislative intent as amplified in Section 112(8)(b) of the CGST Act restricts the pre-deposit amount to 20% of the remaining amount of tax in dispute and does not speak of interest, which is though required under Section 112(8)(a). Department's contention that the order passed by the Single Bench was a discretionary order to secure the interest of revenue and thus there was no error in the said order, was rejected by the Court while it held that the discretion which the court can exercise has to be in terms of the provision of the statute. [*Evergreen Construction, Durgapur Private Limited* v. *Commissioner* – 2024 VIL 336 CAL]

Late fee is leviable up to the late filing of GSTR 9 return and not GSTR-9C reconciliation statement

The Kerala High Court has rejected the Revenue department's submission that the date of filing of the GSTR-9C would be the relevant date for calculating late fee, if the same is not filed along with GSTR-9. The assessee had filed the annual return in Form GSTR-9 for the financial years 2017-18, 2018-19, and 2019-20 belatedly and paid late-fee under Section 47(2) of the CGST Act, 2017. The Department, however, demanded late fees by stating that the date of filing of reconciliation statement in Form GSTR-9C would be the date of filing of annual return. The Court in this regard noted that the GST portal does not allow payment of a late fee for the late filing of Form GSTR-9C and only enables charging of a late fee for Form GSTR-9. According to the Court, Form GSTR-9 filed without Form GSTR-9C may be deficient, attracting a general penalty, however, a late fee cannot be applied to regularize Form GSTR-9 by filing Form GSTR-9C.

The Court also noted that the Government itself had waived the late fee under Notification No. 07/2023 dated 31 March 2023 and Notification No. 25/2023 dated 17 July 2023, and held that there was no justification for continuing with the notices for non-payment of late fee for belated Form GSTR-9C filings, especially those filed by taxpayers before 1 April 2023, the date on which the one-time amnesty commenced. [*Anishia Chandrakanth* v. *Superintendent* – 2024 VIL 371 KER]

Late fee and interest for delayed filing of return/payment of tax is payable only in case of failure on part of assessee

The Allahabad High Court has held that the levy of late fee and interest may arise only in the event of 'failure' on the part of an assessee to file a return and/ or payment of due tax within time. The Court observed that the assessee had initiated the payment of tax within time and the amount was also debited from its account, within prescribed time, and thus the 'failure' could never be attributed to the assessee. The High Court was also of the view that errors committed by the bank/ or GSTN may not involve the assessee. The writ petition was disposed of leaving it open to the GSTN and the Bank to device a better mechanism to ensure prompt credit and debit entries to arise in real time. [*Bhole Baba Milk Food Industries Limited* v. *Union of India* – 2024 VIL 393 ALH]

Liability on ocean freight in case of import of goods – Decision in *Mohit Minerals* is applicable for FOB contracts also

The Bombay High Court has rejected the submission of the Department that the Gujarat High Court decision in *Mohit Minerals*, as upheld by the Supreme Court, needs to be applied only in respect of the cases which involve the contracts on CIF basis and not FOB contracts. The Court noted that the case in *Mohit Minerals* before the High Court of Gujarat was a case which involved both categories of contract, namely CIF and FOB, as noted in paragraph 57 of the judgment of the High Court. The Bombay High Court in this regard also observed that once the notification was declared as *ultra vires*, the application of same notification would amount to applying an illegal notification. The SCN was thus held as without jurisdiction. [*Agarwal Coal Corporation Pvt. Ltd.* v. *Assist. Commissioner* – 2024 VIL 356 BOM]

No GST on hostel service to girl students and working women

The Madras High Court has held that 'hostel services' provided to the girl students and working women will squarely amount to be 'residential dwelling' and accordingly, the same will be covered under Entry No.12 of exemption Notification No.12/2017-Central Tax (Rate). The Court in this regard held that expression 'residential dwelling' in the said notification includes hostel which is used for residential purposes by students or working women. It was also of the view that merely

because the persons are staying in hostel rooms due to their financial condition, the same will not take away the status of the said hostel room as residential dwelling for the inmates of the room, because after their avocation, they have been staying, sleeping, eating, washing, etc in the hostel rooms alone. The High Court also noted that no commercial activities could be attributed against the owners of the hostels since they are providing only 'residential accommodation' to the girl students, working women, etc., who are using the 'hostel premises' as their residence and not for business purpose. The Court also held that for this exemption the nature of the end-use should be 'residential' and that it cannot be decided by the nature of the property or the nature of the business of the service provider. [*Thai Mookambikaa Ladies Hostel* v. *Union of India* – 2024 VIL 261 MAD]

Contribution towards Corpus/Sinking Fund is 'advance payment' liable to GST at the time of receipt

The West Bengal Appellate AAR has held that contribution received by a Resident Welfare Association towards Corpus Fund/Sinking Fund is taxable and the RWA is liable to pay tax at the time of receipt of such amount in accordance with the provisions of Section 13(2) of the CGST Act. The Appellate AAR in this regard observed that the contribution is not in the nature of a 'deposit' but an 'advance payment' made by the members of the RWA for receiving a supply of common area maintenance services to be provided to them by the RWA in future. The Applicant/appellant had contended that the amount towards the corpus fund is made by the members not in relation to any supply of services, rather the funds are maintained for future contingencies, and hence shall be leviable to GST when the same is applied as consideration at the time of actual supply of service. [In RE: *Prinsep Association of Apartment Owners* – 2024 VIL 17 AAAR-WEST BENGAL]

SEZ unit is not required to pay GST under RCM subject to furnishing of LUT/Bond

The Gujarat AAR has held that a SEZ unit is not required to pay GST under Reverse Charge Mechanism on goods transport agency, legal services from an advocate, security services and services by way of hiring buses for employees from DTA, in accordance with RCM Notification No. 10/2017-IT(Rate). The AAR in this regard observed that the Legislature's intention is not to tax supplies to a unit in SEZ or to SEZ developer.

Accordingly, it was held that a unit in SEZ or SEZ developer can procure services, for which IGST is liable to be paid under RCM, without the payment of IGST, provided that the SEZ or SEZ developer furnishes a Letter of Undertaking or Bond as .

specified in condition (i) of Paragraph 1 of Notification No. 37/2017-CT. [In RE: *Waaree Energies Limited* – 2024 VIL 62 AAR-GUJARAT AAR]

Customs

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Ratio decidendi

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Notifications and Circulars

Advance Authorisations – Discharge of export obligation clarified

The Directorate General of Foreign Trade (DGFT) has clarified fulfilment of export obligation under Advance Authorization (AA) issued under Notification No. 18/2015-Cus. and AA for deemed export issued under Notification No. 21/2015-Cus. It has been clarified that the export obligation of AA license issued under Notification No. 18/2015-Cus. issued on or after 10 January 2019 can be fulfilled by:

a. Physical export,

b. Supply of goods made against AA /AA for annual requirement/DFIA (Para 7.02A(a) of FTP 2015-2020),

c. Supply of goods to EOU/STP/EHTP/BTP (Para 7.02A(b) of FTP 2015-2020) or,

d. Supply of capital goods against EPCG authorization provided exemption from payment of applicable Anti-Dumping Duty, Countervailing Duty, Safeguard Duty and Transition Product Specific Safeguard Duty if any has not been availed (Para 7.02A(c) of FTP 2015-2020).

Further, as per Policy Circular 01/2024 dated 12 April 2024, the export obligation of AA license issued under Notification No. 21/2015-Cus. can be, *inter-alia*, fulfilled by either making supplies under para 7.02(A)(a), (b) & sub para (c) of FTP 2015-2020 or by making physical exports.

Yellow peas – Exemption from BCD and AIDC and relaxation in import policy extended

The import of yellow peas falling under Tariff Item 0713 10 10 of the Customs Tariff Act, 1975 was exempted from payment of customs duty leviable under the First Schedule to the Customs Tariff Act, 1975 and Agriculture Infrastructure and Development Cess leviable under Finance Act, 2021 *vide* Notification No. 64/2023-Cus., till 31 March 2024. The said exemption has been extended to allow duty free imports of yellow peas with bill of lading issued on or before 30 June 2024. Notification No. 23/2024-Cus., dated 5 April 2024 has been issued for this purpose.

Further, the earlier relaxed import policy condition of said product has also been extended. As per Ministry of Commerce and Industry Notification No. 04/2023, dated 5 April 2024,

import of yellow peas is free without the Minimum Import Price condition and without Port registration, where Bill of Lading has been issued on or before 30 June 2024, subject to registration under online Import Monitoring System. The last date for Bill of Lading was 31 March 2024 earlier.

Rice – Export of 1000 MT of Kala Namak rice allowed – Export duty also exempted

The Ministry of Commerce and Industry has allowed export of 1000 MT of Kala Namak rice falling under ITC(HS) Code 1006 30 90 through specified customs ports - Varanasi Air Cargo, JNCH Maharashtra, CH Kandla Gujarat, LCS Nepalgunj Road, LCS Sonauli, and LCS Barhni. As per Notification No. 1/2024, dated 2 April 2024, the authorized signatory for certification of the Kala Namak rice and its quantity will be Director, Agriculture Marketing & Foreign Trade, Lucknow. Further, the Ministry of Finance has also issued Notification No. 22/2024-Cus., dated 2 April 2024 (effective from 3 April 2024) allowing exemption from customs export duty on said product and quantity.

Onions – Export of 2000 MT of white onions allowed

The Ministry of Commerce and Industry has allowed export of 2000 MT of white onions collectively from Mundra port, Pipavav port and from Nhava Sheva/JNPT port. A certificate in this regard would however be required from the Horticulture Commissioner, Government of Gujarat, certifying the item and quantity of white onion to be exported. Notification No. 9/2024-25, dated 25 April 2024 has been issued for this purpose.

SCOMET – Policy for general authorisation for export of telecommunication-related items and information security items notified

The Ministry of Commerce and Industry has by Notification No. 82/2023 dated 27 March 2024 amended Para 10.08 of the Foreign Trade Policy, 2023 to introduce the policy for General Authorization to grant one-time bulk licenses for: (A) Export of Telecommunication-related items under SCOMET Category 8A5 Part 1 (GAET), excluding software and technology and items referenced in Para 10.15 (I) of the Handbook of Procedure, 2023, and (B) Export of Information Security items under SCOMET Category 8A5 Part 2 (GAEIS), excluding technology. The detailed procedure for these General Authorizations has been separately notified *via* Public Notices No. 52/2023 and 53/2023, both dated 27 March 2024.

Ratio Decidendi

Valuation (Exports) – Amount paid by foreign buyer to foreign agent as commission is not includible

The CESTAT Hyderabad has set aside the Order-in-Original passed by Commissioner of Customs (Preventive) demanding customs duty on export of iron ore fines wherein the overseas buyer had directly paid commission to overseas agent of the Indian exporter. The Department's case was that this was an additional consideration for sale as this was to be paid by the exporter who in turn depressed the value of export goods. Allowing the appeals, the Tribunal noted that in exports, unlike in imports, the commission paid cannot be added even if the same is paid by the exporter. The Tribunal in this regard also observed that none of the Rules 4 to 6 of the Customs Valuation (Determination of Value of Export Goods) Rules, 2007 provide for addition of an amount as additional consideration for sale. [*Kutch Salt & Allied Industries Ltd.* v. *Commissioner* – 2024 VIL 311 CESTAT HYD CU]

Valuation (Imports) – Advertisement and marketing/promotion expenses incurred by importer when not includible

The CESTAT Bench at New Delhi has held that a clause in the agreement with the foreign exporter requiring the Indian importer (assessee) to promote sales of the imported products cannot be treated as a clause imposing legal obligation on the assessee to incur certain level of expenses on advertisements. The Tribunal also held that merely because there is a discretion vested in the foreign supplier to cancel the agreement, in case the assessee did not spend the indicated amount, it does not mean that there is an enforceable right. Rule 3(2)(b) of the Interpretation Notes to the Customs Valuation (Determination of Price of Imported Goods) Rules, 2007, specifying that marketing expenses undertaken by the buyer on own account, even though by agreement with the seller, are not to be included, was relied upon by the Tribunal while it held that the requirement of Rule 10(1)(e) were not satisfied. Allowing the appeal, the Tribunal also observed that advertising and

marketing expenses were expenses in respect of activities carried out in India post-import and hence could not be said to be a condition for sale of imported goods. [*Reliance Brands Luxury Fashion Pvt. Ltd.* v. *Principal Commissioner* – 2024 VIL 314 CESTAT DEL CU]

Valuation of ship coming to India under self-propulsion – Freight and insurance not includible

In a case where a ship was purchased in Colombo and imported into India on self-propulsion, the CESTAT Bengaluru has set aside the demand of Customs duty based on addition of 20% of value as transportation cost and some amount as freight, insurance and handling charges. The Tribunal in this regard observed that the vessels, ever coursing the seas and oceans, do not take on additional insurance merely for the purposes of movement to a destination for registration, and that the cost of self-propulsion does not add to the value of the vessel. Earlier decision of CESTAT Mumbai in case of *Sachin Kshirsagar*, as upheld by the Supreme Court, and a Supreme Court decision in case of Wipro Ltd., were relied upon for the purpose. It was also noted that some amount towards cost of voyage and other expenses for the fuel from Colombo to Mangalore Port was already added by the assessee and that consequently, the enhancement of assessable value was not sustainable. [*K.C. Maritime India Ltd.* v. *Commissioner* – (2024) 17 Centax 310 (Tri.-Bang)]

No penalty under Section 114A if classification determined only after detailed analysis of the product

Observing that it could only be ascertained that the goods (Shell Flavex Oil 595 B/H) were classifiable under Tariff Item 2707 99 00 of the Customs Tariff Act, 1975 and not under TI 3812 20 90, only after detailed analysis of the product, the CESTAT Ahmedabad has set aside equal penalty imposed under Section 114A of the Customs Act, 1962. The Tribunal for this purpose noted that the assessee was of the *bona fide* belief that the goods were classifiable under TI 3812 20 90. It observed that in all the ports across India the said goods were being classified and accepted under TI 3812 20 90, considering the same as plasticizer, and therefore, it was not only the belief of the assessee but also the view of the Department that the goods were classifiable under TI 3812 20 90. [*Apollo Tyres Limited* v. *Commissioner* – 2024 (4) TMI 791-CESTAT AHMEDABAD]

Assessment – Multiple re-assessments under Section 17 till clearance for home consumption, is permissible – Order of provisional assessment after re-assessment is also correct

The CESTAT New Delhi has rejected the submission that a second re-assessment is not permissible after re-assessment by the Customs officer under Section 17 of the Customs Act, 1962. It was observed that nothing in Section 17 states that the officer can re-access only once and not more than once. According to the Tribunal, an assessment is not always a one-shot affair and proper officer will have to revise the assessment on receiving additional inputs and intelligence. It may be noted that the Tribunal however also stated that once the proper officer issues a home consumption order under Section 47, the goods cease to be 'imported goods' and no change in the assessment is possible except by filing an appeal or issuing a show cause notice. Further, the Tribunal also rejected the contention that once re-assessment is done under Section 17 by the officer, it is no longer open for him to then pass order of provisional assessment. [*Human Health Distribution* v. *Commissioner* – 2024 VIL 375 CESTAT DEL CU]

Interest available from date of deposit on amount deposited during investigation prior to amendment in Section 129EE in August 2014

The CESTAT Hyderabad has allowed interest @6% per annum on the amount deposited by the assessee under protest during investigation. The interest was directed to be paid from the date of deposit till the date of refund observing that the deposit undertook the character of 'Revenue deposit' and as pre-deposit. The Tribunal noted that the assessee had contested the show cause notice and was finally successful before the Tribunal in respect of demand of customs duty. The Tribunal in this regard also noted that a CESTAT Allahabad in *Parle Agro Ltd*., under similar facts and circumstances, had granted interest @12% per annum from the date of deposit till the date of refund, following the ruling of the Supreme Court in *Sandvik Asia Ltd.* Department's contention of non-availability of interest under Section 129EE of the Customs Act, 1962 as deposit was made prior to amendment in Section 129EE in August 2014, was thus rejected. [*Bagadiya Brothers Pvt. Ltd.* v. *Commissioner* – 2024 (4) TMI 381-CESTAT Hyderabad]

Menthol scented supari is classifiable under Chapter 21 and not under Chapter 08

The Madras High Court has held that Menthol scented supari is classifiable under Chapter 21 of the Customs Tariff Act, 1975 and not under Chapter 08 *ibid*. Relying upon Supplementary Note 2 to Chapter 21, the Court observed that the Legislature has specifically carved out an entry for the product which contains betel nut pieces, menthol added to it, and does not include any of the 3 items viz., lime, katha (catechu) or tobacco. The Court also noted that there was a specific entry for the product under Chapter 21 which would prevail over general description of the nut under Chapter 08. The specific inclusion of supari in the Supplementary Note 2 to Chapter 21 and fundamental distinction in the object and purport of both the chapters, was also noted by the Court while it rejected the Department's petition. Department's argument that to qualify under Chapter 21 the product should have undergone a process by which it lost its original character of a betel nut, was also rejected. Supreme Court's decision in the case of *Crane Betel Nut Powder Works* was distinguished. [*Commissioner* v. *AK Impex* – 2024 VIL 328 MAD CU]

Ground glass for manufacture of toothpaste is classifiable under Customs TI 3207 40 00

The CESTAT Mumbai has held that 'BIOMIN F-Ground Glass (Fluoro Calcium Phospho-Silicate)' and 'BIOMIN C-Glass (Chloro Calcium Phospho-Silicate)' are appropriately classifiable under Tariff Item 3207 40 00 of the Customs Tariff Act, 1975 and not under TI 3824 99 90. The Tribunal noted that said product was covered more specifically by the description of CTI 3207 40 00 as 'glass frit' and 'glass in the form such as powder, granules or flakes', and not as 'other' under the residual entry of 'other chemical products and preparations of the chemical or allied industries' under Chapter 38. The fact that the impugned goods were being used in manufacture of toothpaste was also considered by the Tribunal. Lastly, the Tribunal also rejected the contention of the Department that GIR 4 should be used to classify the goods under TI 3824 99 90 as the description of the goods under this heading is most akin. It was held that the Interpretative Rules should be followed sequentially and that GIR 1 was applicable here. Further, according to the Tribunal, use in ceramic, enamelling or glass industry is not material for classification under TI 3207 40 00. CBIC Circular No. 03/2012-Cus., relating to classification of fused silica, was also relied upon. [*Group Pharmaceuticals Ltd.* v. *Commissioner* - (2024) 16 Centax 477 (Tri.-Bom)]

Central Excise, Service Tax and VAT

Ratio decidendi

- Cenvat credit of service tax paid on insurance policies for employees and for their family members, is available – CESTAT Larger Bench
- Access to a bowling alley covered under Negative list – Provision of service other than fun/recreation in any part of such facility is immaterial – CESTAT New Delhi
- Import of Certificate of Authenticity for software procured locally is not 'service' – CESTAT Bengaluru
- Reusable Insulin Delivery Device is covered under Sl. No. 310 of Notification No. 12/2012-C.E. and not as parts and accessories of goods of Heading 9018 – CESTAT Ahmedabad
- Cash refund of CVD and SAD paid for regularization of Advance Authorization is available when amount deposited after introduction of GST in respect of imports made prior to 1 July 2017 – CESTAT Hyderabad

Ratio Decidendi

Cenvat credit of service tax paid on insurance policies for employees and for their family members, is available

The Larger Bench of the CESTAT has held that Cenvat credit of service tax paid by an assessee on the insurance premium paid for procuring insurance services for its employees and their family members is available, as the said service would be an 'input service' under Rule 2(l) of the Cenvat Rules, 2004, both under the main limb of the definition as also under the inclusive limb of the definition. Further, according to the Larger Bench, it is not necessary for the assessee to establish an integral connection between the service and business of manufacture for the said service to be categorized as 'input service' under Rule 2(l) for the period prior to 1 April 2011. The Tribunal in this regard noted that the employers extend such benefits to employees and their families to retain the best resources for providing necessary output services.

The Tribunal observed that the view was supported by the decisions of the Karnataka High Court in *Milipore India* and the Bombay High Court in *Axis Bank*. Tribunal decisions in *John Deere India*, *Emerson Export* and *Infosys Ltd*. were thus held to not lay down the correct law. Further, according to the Tribunal, the Supreme Court Judgment in *Maruti Suzuki* was not applicable as was clear from the Bombay High Court decision in *Ultratech Cement*. Department's reliance of Supreme Court's decisions in *ALD Automotive Pvt. Ltd.* and *TVS Motor Company Ltd.* was rejected. [*Tata Teleservices (Maharashtra) Ltd.* v. *Commissioner* – TS 105 CESTAT 2024 (Mum) ST]

Access to a bowling alley covered under Negative list – Provision of service other than fun/recreation in any part of such facility is immaterial

The CESTAT New Delhi has set aside the order which had disallowed the assessee from being covered under the scope of Section 66D(j) of the Finance Act, 1994 (Negative List – Admission to entertainment events or access to amusement facilities), as the assessee provided services other than bowling alley activity also at the centre. Holding that the provision of access to a bowling alley would be covered under the Negative

List, the Tribunal observed that the definition of 'amusement facility' does not disqualify a facility from being covered under its scope only because services other than fun or recreation are provided in any part or place of such facility. According to the Tribunal, the definition only excludes other places from scope of amusement facility, meaning that the charges for access to such places would be taxable. The Tribunal in this regard noted that the assessee had earmarked places for fun and recreation where no other services were provided.

Similarly, the Department's contention that the amount charged for 'playing bowling' would not be covered in the Negative List, was also rejected by the Tribunal, while it observed that in a bowling arcade amount was charged for entering the bowling premises and once the entry was paid, the customer was free to bowl in the available alley. It was also noted that the assessee had not collected charges for 'playing bowling alley', and that 'access to' an amusement facility would also mean the permission to use such facility. The period involved was from 1 July 2012 to 31 January 2017. ***Assessee in this case was represented by Lakshmikumaran & Sridharan.*** [*Smaaash Leisure Ltd*. v. *Commissioner* – 2024 VIL 317 CESTAT DEL ST]

Import of Certificate of Authenticity for software procured locally is not 'service'

The CESTAT Bengaluru has held that import of Certificate of Authenticity/stickers/labels on high sea sale basis and later affixed on Thin Clients already installed with MS software embedded system procured from local Microsoft authorized distributors is a 'sale' and not 'service'. Rejecting Department's submission of classification as Information Technology Software services, as Thin Clients could not be sold without the MS software licence (sticker/label/COA), the Tribunal held that mere affixing the stickers providing authenticity to the software cannot be construed as a service under ITSS, in absence of transfer of copyright of the software. It was noted that the stickers were considered as goods by the Customs authorities in line with CBIC Circular No. 15/2011, dated 18 March 2011. ***Assessee in this case was represented by Lakshmikumaran & Sridharan.*** [*VXL Instruments Ltd*. v. *Commissioner* – 2024 VIL 387 CESTAT BLR ST]

Reusable Insulin Delivery Device is covered under Sl. No. 310 of Notification No. 12/2012-C.E. and not as parts and accessories of goods of Heading 9018

The CESTAT Ahmedabad has held that Reusable Insulin Delivery Device is covered under Sl. No. 310 of Notification No. 12/2012-C.E. and thus liable to central excise duty @ 6%. Department's contention that goods were parts and accessories of goods of Headings 9018 and 9019 of the Central Excise Tariff and hence eligible for nil rate of duty under Sl. No. 309 of said notification was thus rejected. The Department had earlier denied benefit of Cenvat credit to the assessee since the said goods were alleged to be exempt. Allowing the assessee's appeal, the Tribunal observed that product in the form of syringes with or without needles was rightly classifiable under Tariff Item 9018 31 00, and could not be classified as parts and accessories of the goods of Heading 9018. ***Assessee in this case was represented by Lakshmikumaran & Sridharan.*** [*Sanofi India Ltd*. v. *Commissioner* – TS 95 CESTAT 2024(Ahd) EXC]

Cash refund of CVD and SAD paid for regularization of Advance Authorization is available when amount deposited after introduction of GST in respect of imports made prior to 1 July 2017

The CESTAT Hyderabad has allowed refund of CVD and SAD paid for regularization of Advance Authorizations when the amount was deposited after 1 July 2017, i.e., after introduction of GST regime though was in relation to imports made prior to such date. Relying upon sub-sections 142(3), (5) and (8A) of the Central Goods and Services Tax Act, 2017, the Tribunal held that since the assessee was entitled to Cenvat credit of such CVD and SAD paid, which was no longer available due to implementation of GST, the assessee was entitled to refund. Jharkhand High Court's decision in *Rungta Mines Ltd.* was distinguished. [*Granules India Ltd.* v. *Commissioner* – 2024 VIL 383 CESTAT HYD CU]

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